

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

MERCHANT CAPITAL, LLC, and	)	
NEW SUNSHINE, LLC	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. 1:13-cv-0873 JMS-DML
	)	
MELANIA MARKS SKINCARE, LLC	)	
	)	
Defendant.	)	

**JOINT CASE MANAGEMENT PLAN**

Plaintiffs, Merchant Capital, LLC and New Sunshine, LLC (collectively, the “Plaintiffs”), and Defendant, Melania Marks Skincare, LLC (“Defendant”), by their respective counsel, hereby provide the Court with this Joint Case Management Plan for the Court’s consideration and approval.

**I. Parties and Representatives**

A. Plaintiffs Merchant Capital, LLC and New Sunshine, LLC

Kevin C. Tyra, Atty. No. 11883-49  
Jerry M. Padgett, Atty. No. 27282-49  
THE TYRA LAW FIRM, P.C.  
334 N. Senate Avenue  
Indianapolis, IN 46204  
Telephone: (317) 636-1304  
Fax: (317) 636-1343  
kevin.tyra@tyralaw.net  
jerry.padgett@tyralaw.net

B. Defendant Melania Mark Skincare, LLC

Norman T. Funk, Atty. No. 7021-49  
Libby Y. Goodknight, Atty. No. 20880-49  
Bryan S. Strawbridge, Atty. No. 29076-49  
KRIEG DeVAULT LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204-2079  
Telephone: (317) 636-4341  
Fax: (317) 636-1507  
nfunk@kdlegal.com  
lgoodknight@kdlegal.com  
bstrawbridge@kdlegal.com

**II. Synopsis of Case**

The parties shall each file their respective Case Contentions, summarizing their respective positions in the case, on or before June 28, 2013.

**III. Pretrial Pleadings and Disclosures**

A. Due to the unique procedural nature of this case and the expedited schedule, the parties are not required to serve Fed. R. Civ. P. 26 initial disclosures.

B. The parties shall file and serve their preliminary witness and exhibit lists on or before **June 28, 2013**. The parties shall be under a continuing duty to supplement such lists on a timely basis as they become aware of any additional witnesses and exhibits.

C. As set forth in Defendant's Notice Of Automatic Initial Enlargement Of Time To Respond To Amended Complaint Following Removal filed on June 5, 2013 (Doc. 14), Defendant shall file its answer or other response to Plaintiffs' Amended Complaint on or before **July 3, 2013**.

D. While the parties do not anticipate presenting experts to the Court at the trial/hearing in this matter at this time, the parties shall disclose the name, address, and vita of any expert witness, and shall serve the report required by Fed. R. Civ. P. 26(a)(2) on or before **July 26, 2013**.

E. The parties shall file and serve their final witness and exhibit lists on or before **August 30, 2013**.

F. The parties shall submit Pre-Trial/Hearing Briefs **fifteen (15) days** prior to the trial/hearing in this cause, which shall not exceed twenty-five (25) pages in length, exclusive of exhibits, without leave of Court.

**IV. Discovery and Dispositive Motions**

A. Dispositive motions are not contemplated and shall not be submitted without leave of Court.

B. All written discovery requests shall be served on or before **June 28, 2013**.

C. All written discovery responses shall be served, along with appropriate responsive document productions, within the time required by the Federal Rules of Civil Procedure.

D. In no event shall discovery, including depositions and discovery responses, extend beyond **September 15, 2013**, without leave of Court.

E. The parties do not anticipate electronically stored information (“ESI”) being a significant concern in this case; however, the parties shall take all reasonable and appropriate measures, as dictated by the Federal Rules of Civil Procedure and case law progeny, to protect for and maintain the metadata contained within ESI. Further, when reasonably practicable, responsive documents exchanged in this matter shall be maintained and produced in their native format.

F. Given the accelerated discovery schedule in this matter, counsel for the parties shall cooperate with one another in the scheduling of depositions to enable discovery to be completed in accordance with the timetable provided for in this Case Management Plan.

**V. Pre-Trial/Settlement Conferences**

As has been relayed to the Court in the June 10, 2013 telephonic hearing and discussed amongst the parties, the parties do not anticipate mediation or an informal settlement conference as being likely to result in resolution of the contested issues and do not, accordingly, request the scheduling of such conferences.

**VI. Trial Date**

The parties request a trial/hearing date in October 2013. The trial/hearing is to be tried to the Court and is anticipated to take **three (3) days**.

The Court sets this matter for a trial/hearing to be held on \_\_\_\_\_.

The Court further sets this matter for a Final Pre-Trial/Hearing Conference to be held on \_\_\_\_\_.

## **VII. Referral to Magistrate Judge**

At this time, all parties do not consent to refer this matter to the currently assigned Magistrate Judge pursuant to 28 U.S.C. 636(b) and Federal Rules of Civil Procedure 73 for further proceedings including trial.

## **VIII. Other Matters**

A. The parties stipulate and consent to the trial/hearing in this cause being consolidated as both a trial on Plaintiffs' Complaint for Declaratory Judgment (Doc. 1-1) and a hearing on Plaintiffs' Motion for Temporary Restraining Order wherein injunctive relief was requested in the form of a "temporary restraining order and/or preliminary injunction" (Doc. 11) to determine the validity and force of the License Agreement at the core of this dispute.

B. Subject to appropriate objections as to relevance, admissibility, or other evidentiary issues, any deposition transcript and/or exhibit may be used in the trial/hearing in this matter.

C. The parties shall number deposition exhibits sequentially (*i.e.*, 1, 2, 3, etc.) notwithstanding which party is presenting the exhibit at a deposition, and the numbering shall carry over from such depositions to the trial/hearing in this cause.

D. The parties shall designate and counter-designate any deposition testimony that will be offered into evidence at the trial/hearing in compliance with the usual requirements of the Court for such matters, which designations shall be made at least **ten (10) days** prior to the final pretrial conference.

Respectfully submitted,

/s/ Norman T. Funk

Norman T. Funk, Atty. No. 7021-49  
Libby Y. Goodknight, Atty. No. 20880-49  
Bryan S. Strawbridge, Atty. No. 29076-49  
KRIEG DeVAULT LLP  
One Indiana Square, Suite 2800  
Indianapolis, Indiana 46204-2079  
Telephone: (317) 636-4341  
Fax: (317) 636-1507  
nfunk@kdlegal.com  
lgoodknight@kdlegal.com  
bstrawbridge@kdlegal.com

*Counsel for Defendant  
Melania Marks Skincare, LLC*

/s/ Kevin C. Tyra

Kevin C. Tyra, Atty. No. 11883-49

Jerry M. Padgett, Atty. No. 27282-49

THE TYRA LAW FIRM, P.C.

334 N. Senate Avenue

Indianapolis, IN 46204

Telephone: (317) 636-1304

Fax: (317) 636-1343

kevin.tyra@tyralaw.net

jerry.padgett@tyralaw.net

*Counsel for Plaintiffs*

*Merchant Capital, LLC and New Sunshine,  
LLC*

\*\*\*\*\*

\_\_\_\_\_ PARTIES APPEARED IN PERSON/BY COUNSEL ON  
FOR A PRETRIAL/STATUS CONFERENCE.

\_\_\_\_\_ APPROVED AS SUBMITTED.

\_\_\_\_\_ APPROVED AS AMENDED.

\_\_\_\_\_ APPROVED AS AMENDED PER SEPARATE ORDER.

\_\_\_\_\_ APPROVED, BUT ALL OF THE FOREGOING DEADLINES ARE  
SHORTENED/LENGTHENED BY \_\_\_\_\_ MONTHS.

\_\_\_\_\_ APPROVED, BUT THE DEADLINES SET IN SECTION(S)  
\_\_\_\_\_ OF THE PLAN IS/ARE  
SHORTENED/LENGTHENED BY \_\_\_\_\_ MONTHS.

\_\_\_\_\_ THIS MATTER IS SET FOR TRIAL BY \_\_\_\_\_ ON  
\_\_\_\_\_. FINAL PRETRIAL  
CONFERENCE IS SCHEDULED FOR  
\_\_\_\_\_ AT \_\_\_\_\_.M.,  
ROOM \_\_\_\_\_.

\_\_\_\_\_ A SETTLEMENT/STATUS CONFERENCE IS SET IN THIS CASE  
FOR \_\_\_\_\_ AT \_\_\_\_\_.M. COUNSEL SHALL  
APPEAR:

\_\_\_\_\_ IN PERSON IN ROOM \_\_\_\_\_; OR

\_\_\_\_\_ BY TELEPHONE, WITH COUNSEL FOR  
INITIATING THE CALL TO ALL OTHER PARTIES AND ADDING  
THE COURT JUDGE AT (\_\_\_\_) \_\_\_\_\_; OR

\_\_\_\_\_ BY TELEPHONE, WITH COUNSEL CALLING THE  
JUDGE'S STAFF AT (\_\_\_\_) \_\_\_\_\_; OR

\_\_\_\_\_ DISPOSITIVE MOTIONS SHALL BE FILED NO LATER THAN

Upon approval, this Plan constitutes an Order of the Court. Failure to comply with an Order of the Court may result in sanctions for contempt, or as provided under Rule 16(f), to and including dismissal or default.

**Approved and So Ordered.**

---

Date

---

U. S. District Court  
Southern District of Indiana

KD\_5232949\_1.DOCX